



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### **PIEDMONT REGIONAL OFFICE**

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO JAMES RIVER COMMONS, LLC**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, 62.1-44.15(8a) and (8d), and §62.1-44.34:20 between the State Water Control Board and James River Commons, LLC, for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "JRC" means James River Commons, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
6. "NOV" means Notice of Violation.
7. "Order" means this document, also known as a Consent Special Order.

8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “SEP” means Supplemental Environmental Project.
10. “Site” means the property on which James River Commons LLC is constructing a residential development, located at the southwest quadrant of Chippenham Parkway (Route 150) and Huguenot Road (Route 147) in the City of Richmond, Virginia.
9. “Larus Park” means the 105.6-acre Lewis G. Larus Park, owned by the City of Richmond Department of Parks, Recreation and Community Facilities, and located immediately downstream of and adjacent to the James River Commons development site.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. James River Commons, LLC (“JRC”) is the owner and developer of a parcel of land located on the southwest quadrant of the intersection of Chippenham Parkway and Huguenot Road in the City of Richmond (“Site”). Construction of the residential development of the Site began approximately in January of 2006 and is ongoing.
2. DEQ staff inspected the Site on May 17, 2006, after receiving information that unauthorized impacts to streams and wetlands may have occurred at and downstream of the Site. Staff observed significant sedimentation in downstream stream channels and adjacent wetlands. The impacted areas extend from the Site into Larus Park.
3. Va. Code §621-44.15:5.D and 9 VAC 25-210-50.A state that no person may fill or discharge any pollutant into surface waters, or otherwise alter the physical, chemical or biological properties of surface waters except in compliance with a Virginia Water Protection (“VWP”) permit. DEQ has not issued a VWP permit for this site.
4. DEQ issued Notice of Violation No. 06-06-PRO-202 on June 6, 2006 for the violation of Va. Code §62.1-44.15:5.D and 9 VAC 25-210-50.A.
5. JRC is working with the City of Richmond Department of Public Works and the Virginia Department of Conservation and Recreation to alleviate excess erosion and sedimentation on the Site. JRC has agreed to implement a corrective action plan to correct the sedimentation in the downstream wetland and stream areas through restoration and stabilization.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders James River Commons, LLC, and James River Commons, LLC agrees, to perform the actions described in Appendices A, B, and C of this Order. In addition, the Board orders James River Commons, LLC, and James River Commons, LLC voluntarily agrees, to pay a civil charge of \$15,000 in settlement of the violations cited in this Order, to be paid as follows:

1. JRC shall pay \$5,503 of the civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include JRC's Federal Identification Number.

2. JRC shall satisfy \$2,483 of the civil charge by satisfactorily completing the Supplemental Environmental Project ("SEP") described in Appendix B of this Order.
3. JRC shall satisfy \$7,014 of the civil charge by satisfactorily completing the SEP described in Appendix C of this Order.
4. The net cost of the SEPs to JRC shall not be less than the amount set forth in Paragraphs D.2 and D.3. If it is, JRC shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project to JRC minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. By signing this Order, JRC certifies that it has not commenced performance of the SEPs before DEQ identified the violations alleged in this Order and approved the SEPs.
6. JRC acknowledges that it is solely responsible for completing the SEPs. Any transfer of funds, tasks, or otherwise by JRC to a third party shall not relieve JRC of its responsibility to complete the SEPs as contained in this Order.
7. In the event JRC publicizes the SEPs or the SEP results, JRC shall state in a prominent manner that the project is part of a settlement with DEQ for an enforcement action.
8. The Department has the sole discretion to:

- a. Authorize any alternate SEP proposed by the Facility; and
  - b. Determine whether the SEPs, or alternate SEPs, have been completed in a satisfactory manner.
9. Should the Department determine that JRC has not completed the SEPs or alternate SEPs in a satisfactory manner, or that a proposed alternate SEP is inappropriate, the Department shall so notify JRC in writing. Within 30 days of being notified, JRC shall pay the amount specified in D. 2 and/or D.3 above, as applicable, and as provided in D.1 above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of James River Commons, LLC, for good cause shown by the James River Commons, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violations issued to James River Commons, LLC by DEQ on June 6, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Project as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, James River Commons, LLC admits the jurisdictional allegations, and acknowledges the factual findings and conclusions of law contained herein.
4. James River Commons, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. James River Commons, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by James River Commons, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall

waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. James River Commons, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. James River Commons, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. James River Commons, LLC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Notice shall satisfy this requirement if made to the DEQ representative designated herein by telephone, facsimile or electronic mail, followed by written notice within five business days. Failure to give notice by telephone, facsimile or electronic mail within 48 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the James River Commons, LLC. Notwithstanding the foregoing, James River Commons, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to James River

Commons, LLC Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve James River Commons, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, James River Commons, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this September 8, 2006.

Gerard Seeley, Jr.  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

James River Commons, LLC voluntarily agrees to the issuance of this Order.

By: Henry L. Wilton  
Henry L. Wilton, Managing Member  
James River Commons, LLC

Date: July 20, 2006

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of

July, 2006, by Henry L. Wilton, who is  
(name)

Managing Member of James River Commons, LLC, on behalf of James River Commons,  
(title)

LLC.

Carolyn A. Lipscomb  
Notary Public

My commission expires: 10-31-09

## **APPENDIX A**

### **Wetland and Stream Restoration**

1. **No later than September 15, 2006**, JRC shall submit a complete Corrective Action Plan (“CAP”) to correct the sedimentation impacts to streams and wetlands identified in Paragraph C of the Order, which are adjacent to and downstream of its site. The plan shall include a map of the proposed stream segment restoration locations, an analysis of the impacts and the restoration measures to be employed in each area, and a proposed construction schedule. Restoration shall be conducted in accordance with the approved CAP, including the incorporated schedule. Mechanized equipment shall not enter State waters or wetlands at any time during the restoration, except as authorized in advance in writing by the Department. Modifications to the CAP and schedule must be approved in advance by the Department.
2. **No later than September 30, 2006**, JRC shall submit a plan to monitor restored wetlands and streams during active construction until the site is stabilized. The plan shall include, at minimum, a monitoring schedule, photographic stations, vegetative monitoring stations and methodology, methodology to measure any new sediment deposition, and success criteria for the wetland and stream restoration areas. Monitoring shall be within the applicable drainage areas in accordance with the approved plan and schedule, and reports shall be submitted no later than December 31<sup>st</sup> of the monitoring year. Any alterations or maintenance conducted on the restored areas shall be reported.
  - a. If the restored wetland or stream areas fail to meet the specified success criteria during any monitoring year other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted to DEQ for approval with or before that year's monitoring report. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule.
  - b. If the restored wetland or stream areas fail to meet the specified success criteria during the final monitoring year, JRC shall submit a mitigation plan for the wetlands and streams that were impacted by sedimentation and not successfully restored. The plan shall be submitted with the yearly monitoring report required by Paragraph 3. Plan content and implementation shall be in accordance with 9 VAC 25-690-60.B.16. Proof of purchase of mitigation bank credits or contribution to an in-lieu fee fund shall be submitted within 60 days of plan approval by DEQ.
3. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway  
Enforcement Specialist, Sr.  
VA DEQ – PRO  
4949-A Cox Road  
Glen Allen, VA 23060

Phone: (804) 527-5015  
Fax: (804) 527-5106  
Email: [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov)

**APPENDIX B**  
**Supplemental Environmental Project – Waste Tire Removal**

1. **No later than September 15, 2006**, JRC shall complete the removal and disposal of waste tires surrounding the restored stream and wetland areas described in Appendix A. Waste tires shall be disposed of at a solid waste management facility permitted by DEQ in accordance with Virginia Waste Management Act and the Virginia Solid Waste Management Regulations. JRC shall maintain itemized documentation of the cost of all components of the waste tire removal (including project management, labor, hauling, and disposal).
2. **No later than October 15, 2006**, JRC shall submit to DEQ documentation of the net cost to complete the waste tire removal and documentation of disposal at a permitted solid waste management facility. “Net cost” means the costs of the project minus any tax savings, grants, and first-year operation cost reductions or other efficiencies. The submittal shall include the itemized documentation of cost required by Appendix B, Paragraph 1, above.
3. Should JRC determine that the waste tire removal cannot be completed as required by this Order, JRC shall notify the Department in writing no later than **September 15, 2006**. Such notification shall include:
  - a. An alternate SEP proposal to be considered in lieu of the original SEP; or
  - a. Payment of the amount specified in Paragraph D.2 as provided in Paragraph D.1, above.
4. All requirements of Appendix B of this Order shall be submitted to:

Allison C. Dunaway  
Enforcement Specialist, Sr.  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
Phone: (804) 527-5015  
Fax: (804) 527-5106  
Email: [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov)



**APPENDIX C**  
**Supplemental Environmental Project**  
**Stormwater Management Facility/ Permanent Stream Stabilization**

1. **No later than December 31, 2006**, JRC shall complete construction of a stormwater management facility or other approved permanent stream stabilization measures in the headwaters of the stream channel at the northern site boundary, at approximately 37.544°N, -77.557°W. This requirement does not relieve JRC from its responsibility to obtain all federal, state, and local permits required for construction. JRC shall maintain itemized documentation of the cost of all components of this project (including project management, labor, hauling, and disposal).
2. **No later than October 31, 2006**, JRC shall submit construction plans and specifications for the stormwater management facility or other approved permanent stream stabilization measures.
3. **No later than January 15, 2007**, JRC shall submit to DEQ documentation of the net cost to complete the construction of the stormwater management facility or other approved permanent stream stabilization measures. "Net cost" means the costs of the project minus any tax savings, grants, and first-year operation cost reductions or other efficiencies. The submittal shall include the itemized documentation of cost required by Appendix C, Paragraph 1, above.
4. Should JRC determine that the stormwater management facility or other approved permanent stream stabilization construction cannot be completed as required by this Order, JRC shall notify the Department in writing no later than **December 31, 2006**. Such notification shall include:
  - a. An alternate SEP proposal to be considered in lieu of the original SEP; or
  - b. Payment of the amount specified in Paragraph D.3 as provided in Paragraph D.1, above.
5. All requirements of Appendix C of this Order shall be submitted to:

Allison C. Dunaway  
Enforcement Specialist, Sr.  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
Phone: (804) 527-5015  
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